

REMARKS

In the latest Office Action, claim 10 was withdrawn from consideration because it did not claim specifically the elected anionic surfactant.

The clear intent of claims 9-11 was to provide a series of subgeneric claims dealing specifically with the anionic surfactant. Accordingly, Applicants have amended claim 10 to include specific reference to the preferred anionic surfactants (sodium and potassium stearate and palmitate) as those compounds appear in both claims 9 and 11. Accordingly, modification of the restriction requirement is respectfully requested to now include claim 10 for consideration in the present application. This request is deemed within the spirit of the previous election and certainly does not expand the subject matter of the elected invention nor require an expanded search.

Claim 1 has been amended to limit the claimed invention to a chewing gum composition. Accordingly, claims 32, 37 and 38 have been canceled.

Claim 1 has also been amended in the manner set forth on page 21, lines 6-12 of the present application. Stain removing components are stated not to be directly mixed with the gum base and therefore are not materially bound to the gum base in order to achieve a stain removing effect when the stain removing components are in the presence of a hydrophobic material such as gum base. As

indicated beginning on page 19, line 4, Applicants have determined that the stain removing components claimed in the present application can perform a stain removing function when they are not bound by a hydrophobic material such as gum base. In order to provide a stain removing effect, the stain removing components of the present invention must be free to perform a stain removing function. This action is inhibited when such stain removing components are incorporated into or bound to the gum base in a chewing gum composition. Accordingly, Applicants have not just added certain materials to a chewing gum composition which achieve a stain removing effect, but have done so in a specific manner so that the stain removing components are free of the gum base and therefore free to perform a stain removing function when released from the chewing gum composition by normal chewing.

The amendment to the claims also includes new claims 39 and 40 directed to the presence of a coating as part of the chewing gum composition. Support for new claims 39 and 40 is shown on page 20, lines 11-15. Of particular importance is the presence of stain removing components at least in the coating. Since the coating does not contain gum base, the stain removing components are free of the gum base by being present in the coating so that they can form a stain removing function.

Entry of the amendment to the claims and the addition of new claims 39 and 40 is therefore deemed proper and is respectfully requested.

Claims 1-9, 11-14, 17, 20-25, 29-33, 35, 37 and 38 stand rejected as anticipated by U.S. Patent Publication No. 2003/0072841. The Office Action states that the reference teaches every limitation of the claims including the presence of a peroxide, polyphosphate and sodium stearate. The rejection is hereby traversed and reconsideration is respectfully requested.

The '841 reference is directed to a chewing gum composition that inhibits the build up of plaque. The composition employs polybutene which forms a protective coating on the hard tissue surfaces of the oral cavity (paragraph 0007). As indicated in paragraph 0009, the reference invention is directed to two components, a polybutene component and a chewing gum (or confection). The polybutene component is comprised of lower molecular weight polybutene and optionally one or more cosmetic and/or therapeutic actives, sweeteners or flavorants.

As previously indicated, sodium stearate and potassium stearate are preferred examples of the anionic surfactants employed in the present invention as stain removing components. Also as previously indicated, these components must be free of the gum base in order to perform their stain removing function. It is well known in the art that anionic surfactants including sodium stearate and potassium stearate have been used as softeners which are incorporated into the gum base in order to provide a softer chew. That is precisely the way sodium stearate and sodium palmitate are used in the reference as described in paragraph 0062. Thus, the reference teaches the use of anionic surfactants (e.g. sodium stearate and

sodium palmitate) as softeners which are directly incorporated into the gum base for the purpose of softening the gum base to provide a softer chew. Thus, according to the teaching of the reference, anionic surfactants are not available as a stain removing component.

The reference indicates that optional actives may be combined with the polybutene component. These actives include an anti-calculus agent such as a polyphosphate and a whitening agent such as a suitable peroxide compound. The purpose of combining the polybutene component with the actives is to form a film on the surface of the teeth which may provide sustained release of the actives (paragraph 0007).

Paragraph 0006 identifies polybutene as a component of denture adhesives and as a gum base indicative of the hydrophobic properties of the polybutene. Thus, the combination of polybutene and actives is contrary to the present invention which attempts to keep stain removing agents away from hydrophobic materials such as gum base. For this reason as well, the present invention is neither anticipated by nor rendered obvious over the reference.

In addition, only one of the three claimed stain removing components of the present invention (peroxide compounds) is identified in the reference as having any stain removing effect (see paragraph 0039). As indicated at the top of page 8 of the present application, Applicants have discovered that the novel combination of at

least two of the stain removing components claimed in the present invention (wherein a material portion of the same is not bound to the gum base) significantly improves stain removing activity over the activity of the individual stain removing components alone (see page 8, lines 1-5 and the Examples beginning on page 31).

One of ordinary skill in the art having the reference before him could not be led to the claimed invention. First, of the three groups of compounds claimed in the present invention, only one is identified as a stain removing agent in the reference. Thus, the reference teaches use of peroxide compounds only to remove stains. Since there is no indication that polyphosphates or anionic surfactants could be used as stain removing components (or how to use such compounds as stain removing components) one of ordinary skill in the art would never use at least two of the three classes of compounds that Applicants use for the purpose of achieving a stain removing effect.

U.S. Patent No. 6,685,916 is cited to provisionally reject the claims of the present application on the ground of non-statutory obviousness-type double patenting. The provisional rejection is hereby traversed and reconsideration is respectfully requested.

A restriction requirement issued in the '916 Patent requiring Applicant to file the present divisional application in order to gain consideration of the separate and distinct invention of the present application. Because the U.S. Patent and

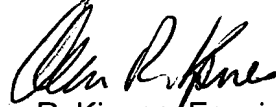
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Trademark Office previously decided that separate and distinct inventions were present, it should not now assert the opposite, namely that the presently claimed subject matter is the same invention as that claimed in the '916 Patent.

It is therefore submitted that the present application is in condition for allowance and early passage to issue is therefore deemed proper and is respectfully requested.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen R. Kipnes", written in a cursive style.

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